

## SENATE BILL NO. 326

INTRODUCED BY R. ERICKSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA MEDICAL MARIJUANA ACT TO INCLUDE TREATMENT FOR ADDITIONAL DEBILITATING MEDICAL CONDITIONS; ALLOWING FOR A MINOR'S USE OF A PARENTALLY DESIGNATED CAREGIVER; ALLOWING REGISTERED PATIENTS AND CAREGIVERS TO OBTAIN MEDICAL MARIJUANA FROM ANY REGISTERED CAREGIVER; ALLOWING FOR DEPARTMENT INVENTORY AUDITS UNDER CERTAIN CONDITIONS; INCREASING THE AMOUNT OF MEDICAL MARIJUANA THAT PATIENTS AND CAREGIVERS MAY EACH POSSESS; PROTECTING ADDITIONAL RIGHTS OF APPROVED USERS AND REGISTRY IDENTIFICATION CARDHOLDERS; AND AMENDING SECTIONS 50-46-102, 50-46-103, AND 50-46-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 50-46-102, MCA, is amended to read:

**"50-46-102. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Caregiver" means an individual; who is 18 years of age or older and who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. ~~A qualifying patient may have only one caregiver at any one time~~ HAS AGREED TO UNDERTAKE RESPONSIBILITY FOR MANAGING THE WELL-BEING OF A PERSON WITH RESPECT TO THE MEDICAL USE OF MARIJUANA, WHO is registered with the department by a patient who authorizes the caregiver to grow medical marijuana for that patient under the terms of this chapter, and who may supply medical marijuana as possible and when needed to other registered patients and registered caregivers in accordance with the possession limits specified in this chapter.

(b) The term does not include the qualifying patient's physician.

(2) "Debilitating medical condition" means:

(a) cancer, glaucoma, diabetes, post-traumatic stress disorder, hepatitis C, amyotrophic lateral sclerosis, agitation of Alzheimer's disease, nail-patella syndrome, dysmenorrhea, ~~or~~ positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:

1 (i) cachexia or wasting syndrome;

2 (ii) severe or chronic pain;

3 (iii) severe nausea;

4 ~~(iv) anxiety;~~

5 ~~(v) insomnia;~~

6 ~~(iv)(vi)(iv)~~ seizures, including but not limited to seizures caused by epilepsy; or

7 ~~(v)(vii)(v)~~ severe or persistent muscle spasms, including but not limited to spasms caused by multiple  
8 sclerosis or Crohn's disease; or

9 (c) any other medical condition or treatment for a medical condition adopted by the department by rule.

10 (3) "Department" means the department of public health and human services.

11 (4) "Marijuana" has the meaning provided in 50-32-101.

12 (5) "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer,  
13 or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms  
14 or effects of a qualifying patient's debilitating medical condition.

15 (6) "Physician" means a person who is licensed under Title 37, chapter 3.

16 (7) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating  
17 medical condition.

18 (8) "Registry identification card" means a document issued by the department that identifies a person  
19 as a qualifying patient or caregiver.

20 (9) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or  
21 preparation of marijuana.

22 (b) The term does not include the seeds, stalks, and roots of the plant.

23 (10) "Written certification" means a qualifying patient's medical records or a statement signed by a  
24 physician stating that in the physician's professional opinion, after having completed a full assessment of the  
25 qualifying patient's medical history and current medical condition made in the course of a bona fide  
26 physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits  
27 of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."

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29 **Section 2.** Section 50-46-103, MCA, is amended to read:

30 **"50-46-103. Procedures -- minors -- confidentiality -- report to legislature.** (1) The department shall

1 establish and maintain a program for the issuance of registry identification cards to persons who meet the  
2 requirements of this chapter.

3 (2) Except as provided in subsection (3), the department shall issue a registry identification card to a  
4 qualifying patient who submits the following, in accordance with department rules:

- 5 (a) written certification that the person is a qualifying patient;
- 6 (b) an application or renewal fee;
- 7 (c) the name, address, and date of birth of the qualifying patient;
- 8 (d) the name, address, and telephone number of the qualifying patient's physician; and
- 9 (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

10 (3) The department shall issue a registry identification card to a minor if the materials required under  
11 subsection (2) are submitted and the custodial parent, ~~or legal guardian,~~ or parentally designated caregiver with  
12 responsibility for health care decisions for the minor signs and submits a written statement that:

13 (a) the minor's physician has explained to that minor and to the custodial parent, ~~or legal guardian,~~ or  
14 parentally designated caregiver with responsibility for health care decisions for the minor the potential risks and  
15 benefits of the medical use of marijuana; and

16 (b) the custodial parent, ~~or legal guardian,~~ or parentally designated caregiver with responsibility for health  
17 care decisions for the minor:

- 18 (i) consents to the medical use of marijuana by the minor;
- 19 (ii) agrees to serve as the minor's caregiver or designates a caregiver; and
- 20 (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of  
21 marijuana by the minor.

22 (4) The department shall issue a registry identification card to the caregiver who is named in a qualifying  
23 patient's approved application if the caregiver signs a statement agreeing to provide marijuana only to qualifying  
24 patients ~~who have named the applicant as caregiver~~ or registered caregivers. The department may not issue a  
25 registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense.  
26 A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's  
27 medical use of marijuana.

28 (5) (a) The department shall verify the information contained in an application or renewal submitted  
29 pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the  
30 application or renewal.

(b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:

(a) the name, address, and date of birth of the qualifying patient;

(b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

(c) the date of issuance and expiration date of the registry identification card; and

(d) other information that the department may specify by rule.

(7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department;  
or, INCLUDING THE ADOPTION OF RULES REGARDING THE PROCESS AND IMPLEMENTATION OF ONSITE INVENTORY AUDITS THAT MAY BE CONDUCTED BY THE DEPARTMENT FOR ANY CAREGIVER WITH MORE THAN FIVE PATIENTS. THE RULES MUST INCLUDE PROVISIONS ADDRESSING THE REQUIRED AMOUNT OF REASONABLE NOTICE NECESSARY BEFORE INITIATING AN ONSITE INVENTORY AUDIT.

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians."

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2       **Section 3.** Section 50-46-201, MCA, is amended to read:

3       **"50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of**  
4 **medical use.** (1) A qualifying patient or caregiver who possesses a registry identification card issued pursuant  
5 to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege,  
6 including but not limited to civil penalty or disciplinary action by a professional licensing board or the department  
7 of labor and industry, for the medical use of marijuana or for assisting in the medical use of marijuana if the  
8 qualifying patient or caregiver possesses marijuana not in excess of the amounts allowed in subsection (2).

9       (2) (A) A qualifying patient and that qualifying patient's caregiver may not possess more than six mature,  
10 flowering marijuana plants, EIGHT IMMATURE PLANTS, and ~~4 ounce~~ 12 3 ounces of usable marijuana each.

11       (B) FOR PURPOSES OF SUBSECTION (2)(A), "MATURE" MEANS THE PLANT HAS DIFFERENTIATED AS TO GENDER  
12 AND IS FEMALE IN ANY STATE OF BUDDING AND "IMMATURE" MEANS PLANTS THAT ARE NOT MATURE BUT EXCLUDES  
13 SPROUTS OR CLONES THAT HAVE NOT YET DEVELOPED ROOTS OR ARE NOT YET PLANTED IN SOIL.

14       (3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the  
15 qualifying patient or caregiver:

16       (i) is in possession of a registry identification card; and

17       (ii) is in possession of an amount of marijuana that does not exceed the amount permitted under  
18 subsection (2).

19       (b) The presumption may be rebutted by evidence that the possession of marijuana was not for the  
20 purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

21       (4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or  
22 privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the  
23 department of labor and industry, for providing written certification for the medical use of marijuana to qualifying  
24 patients.

25       (5) An interest in or right to property that is possessed, owned, or used in connection with the medical  
26 use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for  
27 the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

28       (6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as  
29 provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity  
30 of the medical use of marijuana as permitted under this chapter.

1 (7) Possession of or application for a registry identification card does not alone constitute probable cause  
2 to search the person or property of the person possessing or applying for the registry identification card or  
3 otherwise subject the person or property of the person possessing or applying for the card to inspection by any  
4 governmental agency, including a law enforcement agency.

5 (8) (A) Application for a registry identification card or the possession or use of medical marijuana in  
6 accordance with this chapter does not constitute cause for termination of employment, a tenancy, or a rental  
7 agreement or for modification of the child custody rights of the qualifying individual.

8 (B) THIS SECTION DOES NOT PROHIBIT LANDLORDS FROM RESTRICTING OR PROHIBITING THE GROWING OF  
9 MEDICAL MARIJUANA IN RENTAL PREMISES BY TENANTS OR RENTERS.

10 ~~(8)~~(9) A registry identification card or its equivalent issued by another state government to permit the  
11 medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical  
12 use of marijuana has the same force and effect as a registry identification card issued by the department."

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